

## PLANNED DEVELOPMENT PERMIT

<b>FILE NO.</b>	<b>PD14-014</b>
<b>LOCATION OF PROPERTY</b>	<b>Westerly terminus of Dixon Landing Road, approximately 3,000 feet west of I-880 and Dixon Landing Road (1601 Dixon Landing Road)</b>
<b>ZONING DISTRICT</b>	<b>A(PD) Planned Development</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Open Space, Parkland, and Habitat with a Solid Waste Disposal Site Overlay and Light Industrial</b>
<b>PROPOSED USE</b>	<b>Planned Development Permit to effectuate the Planned Development Zoning District (File No. PDC07-071) and allow a vertical expansion to an existing landfill, with no additional construction, on a 352 gross acre site</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Newby Island Sanitary Landfill and The Recyclery Rezoning Project EIR</b>
<b>OWNER/APPLICANT/ADDRESS</b>	<b>International Disposal Corporation of California 1601 Dixon Landing Road Milpitas, CA. 95035</b>

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as follows for this proposed project:

- 1. Site Description and Surrounding Uses.** Newby Island Sanitary Landfill and Recyclery is located on an island separated by Coyote Creek and the South Coyote Slough from the mainland around it. The project site consists of three visually distinct subareas. The largest subarea is known as the Newby Island Sanitary Landfill (NISL). This subarea is approximately 325 acres that includes 296 acres of previous and current landfill activity and 29 acres of sloughs and marshland that will not be used for landfill. NISL is a solid waste disposal facility that currently provides disposal capacity to nearby cities including San Jose, Milpitas, Santa Clara, Cupertino, Los Altos, and Los Altos Hills. NISL is a Class III landfill facility as defined by the State Water Resources Control Board and is permitted to accept non-hazardous municipal solid waste (MSW). MSW is also referred to as mixed municipal waste and garbage, and includes all kitchen and table food waste and animal or vegetable waste that attends or results from the storage, preparation, cooking, or handling of food. NISL is a non-conforming land use in that the site has been used as a landfill since the 1930s, prior to its annexation into the City of San Jose in 1968 as an operating landfill. The second subarea is known as the "D-shaped area," which is a 17-acre area located north of the main driveway, immediately west of the entrance gate at Dixon Landing Road. The D-shaped area is currently used for offices in temporary trailers, vehicle parking, and wood processing. The third subarea is known as the Recyclery, and is a 10-acre area located just south of the main driveway, west of the entrance gate, opposite of the D-shaped area. The Recyclery consists of an existing materials recovery facility (MRF) that collects, processes, and/or transfers reusable or recyclable materials.

The project site is surrounded by wetlands and the Environmental Education Center at the Don Edwards San Francisco Bay National Wildlife Refuge to the southwest, west, and northwest. The visitor center provides interpretive exhibits and educational programs. The refuge consists primarily of wetlands and sloughs, which drain to San Francisco Bay. The San Jose/Santa Clara Water Pollution Control Plant (WPCP) and biosolids lagoons are located to the south and southeast of the project site. Interstate 880 and commercial/light industrial uses are located northwest of the project site, in the City of Milpitas. The Alviso community is located over 10,000 feet southwest of the project site, beyond the Wildlife Refuge and WPCP.

2. **Project Description.** The site's Planned Development Zoning (File No. PDC07-071), approved in 2012, allowed an increase to the maximum height of the landfill from 150 feet to 245 feet, and an increase of the landfill capacity by 15.12 million cubic yards. The subject Planned Development Permit would allow Planned Development Permit to effectuate the Planned Development Zoning District (File No. PDC07-071) and allow a vertical expansion to the existing landfill, with no additional construction. The landfill is currently permitted with a maximum height of 150 feet. Currently, the existing landfill height, where the additional height is proposed, varies between 100 and 130 feet. Since this is an active landfill area, the elevation changes continuously. Compared to the existing landfill height, the proposed project would allow for a height increase of 115 to 145 feet. Compared to the currently permitted maximum height, the proposed project would allow for a height increase of 95 feet. While the proposed project would allow for the maximum landfill height to be 245 feet, the entire landfill area would not be filled to 245 feet. The landfill would slope up with the center of the landfill peaking at 245 feet. Landfill grading is designed to maximize slope stability and allow for maintenance in the future.
3. **General Plan Conformance.** The Project is consistent with the General Plan in that:
  - a. The NISL area is consistent with the site's Envision San Jose 2040 General Plan Land Use / Transportation Diagram designation of Open Space, Parklands, and Habitat with a Solid Waste Disposal Site Overlay which is applied to currently operating solid waste disposal facilities. The D-shaped area and the Recyclery areas are consistent with the site's Envision San Jose 2040 General Plan Land Use / Transportation Diagram designation of Light Industrial which allows for a wide variety of industrial uses including warehousing, wholesaling, and light manufacturing.
4. **General Development Standard Compliance.** The project is consistent with the regulations of the Planned Development General Development Standards in the following manner:
  - a. **Height.** Per the development standards, the maximum height of the landfill can be 245 feet, which the proposed project is consistent with.
5. **Environmental Review.** The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties. An Environmental Impact Report "Newby Island Sanitary Landfill and The Recyclery Rezoning Project EIR" was adopted by the City Council on August 14, 2012. The EIR and associated Mitigation, Monitoring, and Reporting Program identify mitigation relating to Air Quality, Biological Resources, Geology and Soils, and Global Climate Change, which the subject permit is required to adhere to.

6. **Planned Development Permit Findings.** Chapter 20.100 of Title 20 of the San Jose Municipal Code establishes required findings for issuance of a Planned Development Permit.
- The planned development permit, as issued, furthers the policies of the general plan in that the NISL area is consistent with the site's Envision San Jose 2040 General Plan Land Use / Transportation Diagram designation of Open Space, Parklands, and Habitat with a Solid Waste Disposal Site Overlay, which is applied to currently operating solid waste disposal facilities.
  - The planned development permit, as issued, conforms in all respects to the planned development zoning of the property in that this permit serves to allow an increase in height of up to 245 feet of the existing landfill, consistent with the approved General Development Standards which allows heights up to 245 feet.
  - The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious in that no new construction is proposed.
  - The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties. An Environmental Impact Report "Newby Island Sanitary Landfill and The Recyclery Rezoning Project EIR" was adopted by the City Council on August 14, 2012. The EIR and associated Mitigation, Monitoring, and Reporting Program identify mitigation relating to Air Quality, Biological Resources, Geology and Soils, and Global Climate Change, which the subject permit is required to adhere to.

In accordance with the findings set forth above, a Planned Development Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

- Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - Acceptance of the Permit by the applicant; and
  - Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
- Permit Expiration.** This Permit shall automatically expire four years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is

approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.

3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance to Plans.** The development of the site shall conform to the approved (Name Type of Permit Here) plans entitled, "Planned Development Permit for Newby Island Sanitary Landfill and The Recyclery" dated July 18, 2008, last revised on February 19, 2014 on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
6. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
7. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
8. **Revocation.** This Permit is subject to revocation for violation of any of its provisions or conditions.
9. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
10. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.

11. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
12. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
13. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
14. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
15. **Generators.** This permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
16. **Conformance to MMRP.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program approved for this development.
  - a. Air Quality (Bay Area Air Quality Management District).
    - i. **MM AIR – 1.1:** As required by BAAQMD regulations, the project proponent shall be responsible for purchasing NO<sub>x</sub> and VOCs/POCs/ROGs offsets for emissions in excess of BAAQMD's current annual emission thresholds for NO<sub>x</sub> and VOCs/POCs/ROGs or obtaining the offsets through BAAQMD's Small Facility Banking Account.
  - b. Biological Resources (Director of PBCE and NSAP Oversight Committee).
    - i. **MM BIO – 7.1: Pre-activity Surveys.** To avoid take of burrowing owls in violation of the MBTA, surveys for burrowing owls shall be completed in potential habitat in conformance with the CDFG protocol, no more than 15 days prior to the start of any new ground-disturbing activity (*i.e.*, any activity that is not already ongoing at the same location as part of the current landfill operations) associated with the expansion of the landfill, such as filling or grading in previously undisturbed ruderal/grassy areas.

If no burrowing owls are located during these surveys, no additional action is warranted. If these surveys detect burrowing owls on or within 250 feet of the location proposed for landfilling, grading, or other activities, then any ongoing activity can continue as long as it does not increase in intensity, or encroach closer to an existing burrow, based on a review of proposed/ongoing activities in the burrow's vicinity by a qualified biologist, and as long as the existing burrow is not destroyed and owls are not in danger of being harmed. If activity would increase in intensity or proximity to an occupied burrow, based on a review of proposed/ongoing activities in the burrow's vicinity by a qualified biologist, the following measures shall be implemented:

*Buffer Zones.* If burrowing owls are present during the breeding season (generally 1 February to 31 August), a 250-foot buffer, within which no new project-related activity shall be permissible, shall be maintained between project activities and occupied burrows. Owls present at burrows on the site after 1 February shall be

assumed to be nesting on or adjacent to that location unless evidence indicates otherwise to the qualified biologist. This protected area shall remain in effect until 31 August or, based upon monitoring evidence, until the young owls are foraging independently.

*Relocation.* If ground-disturbing activities would directly impact an occupied burrow, the owl(s) shall be evicted outside the nesting season to avoid impacts to the bird(s). No burrowing owls shall be evicted from burrows during the nesting season (1 February through 31 August) unless evidence indicates that nesting is not actively occurring (*e.g.*, because the owls have not yet begun nesting early in the season, or because young have already fledged late in the season).

- c. **MM BIO – 13.1:** The Nuisance Species Abatement Plan (NSAP), which is attached to this MMRP, shall be fully implemented at the landfill and the Recyclery as long as the landfill and/or Recyclery are in operation. Implementation and funding of the plan, including any consultants considered necessary and approved by the Director of Planning, Building, and Code Enforcement, and associated on-going City staff monitoring/oversight costs, shall be the responsibility of the landfill's General Manager or Director of Infrastructure Development, while the City of San José's Director of Planning, Building, and Code Enforcement shall oversee and enforce the NSAP's implementation.

The Plan includes standard nuisance species abatement measures (maintaining the minimum size working face of the landfill consistent with existing practice and permits; compacting and covering refuse – including using safe and stable tarps or other materials in lieu of soil on the working face of the landfill if they are demonstrated to impede access to food waste by nuisance species; covering and rapid processing of tires; minimizing surface water; trapping or shooting medium-sized mammals; using rodenticides within buildings; and minimizing cover near nuisance species food sources and sensitive habitats) that must be implemented, as well as adaptive nuisance species abatement measures (pyrotechnics, paintball guns, vehicles, trained dogs, trained falcons, human disturbance, distress call recordings, predator calls, decoys of distressed birds, visual distraction/deterrent devices, vegetation management, physical barriers and roots deterrents, rodent trapping, a mobile component to gull abatement, use of radio-controlled drones, and mosquito larvicides) that are to be used as necessary. The standard measures are required to be implemented, although it is not expected that all measures in the NSAP are to be used simultaneously; the landfill operator may choose the appropriate measures to meet the success criteria identified in the NSAP.

Outdoor food waste processing on the Recyclery property attracts gulls and other nuisance species to an area of the site where the various abatement measures (pyrotechnics, cannons, falcons, etc.) are not generally used and may be inconvenient. Measures to control access to food waste by gulls and other nuisance species at this location must be implemented, including a building enclosure or netting. The building or netting design must be reviewed by a qualified biologist that has been approved by the Director of Planning, Building, and Code Enforcement.

As outlined in the NSAP, monitoring shall be conducted by qualified biologists funded by the landfill's General Manager or Director of Infrastructure Development and approved by the Director of Planning, Building, and Code Enforcement to determine the effectiveness of initial abatement measures, and abatement techniques shall be adapted as determined by these biologists as necessary to ensure effectiveness. Regular monitoring

reports (monthly memos and annual reports) shall be prepared and submitted to the Director of Planning, Building, and Code Enforcement by monitoring biologists to document the success of the abatement program. The monitoring and reporting criteria are outlined in detail in the NSAP attached to this MMRP.

For each group of nuisance species addressed by the NSAP, success of the NSAP is defined as maintaining or reducing abundance of nuisance species using the landfill relative to baseline levels identified in the NSAP. In other words, the abatement plan is not considered successful if measures of abundance of nuisance species exceed baseline levels.

The Director of Planning, Building, and Code Enforcement will assemble and select members of an NSAP Oversight Committee. This committee will consist of qualified biologists, City of San José staff, and others chosen at the Director's discretion. The qualified biologists on the committee must include representatives from the Don Edwards San Francisco Bay National Wildlife Refuge and a Bay-area bird observatory. The Director may choose other biologists or others with relevant expertise, which may include City of San José Staff and the City's consultants. The NSAP Oversight Committee will review annual monitoring reports and provide recommendations to the Director regarding any changes in success criteria (including levels of abundance that should be considered the baseline against which monitoring results will be compared), abatement measures, monitoring measures, or other program components that should be made. This committee will be provided copies of monthly status reports and may also be consulted by the Director to discuss nuisance species abatement issues identified in monthly reviews. Meetings of the NSAP Oversight Committee shall include biologists that were retained to monitor wildlife at the landfill and Recyclery and who prepared the reports. Additional details regarding the success criteria for nuisance species, including gulls, corvids, mammals, and mosquitoes, identified in the NSAP are provided in Appendix D of this EIR.

It is expected that the abatement process will be adaptive, and there may be periods when the success criteria described in the NSAP are not achieved and the NSAP Oversight Committee and consulting biologists determines the most effective means of limiting the landfill's subsidy of nuisance species populations. However, if the Director of Planning, Building, and Code Enforcement (in consultation with the NSAP Oversight Committee) determines that the NSAP is being implemented successfully for that year of operation, no additional mitigation of this impact is necessary. If the Director determines that the abatement program is not being implemented consistently and successfully, and adaptive management is inadequate to achieve the desired success criteria, then MM BIO – 13.3 shall be implemented.

- d. **MM BIO – 13.3:** If the landfill operator is not meeting the success criteria specified in the NSAP, the operator shall be required to contribute to one or multiple ongoing predator control programs and/or provide habitat at an off-site, South Bay location(s) to benefit the sensitive species that are being adversely affected by nuisance species supported by the landfill. Such sensitive species may include species associated with managed ponds, such as the western snowy plover, terns, American avocets, and black-necked stilts, and/or species associated with tidal salt marshes, such as the California clapper rail, salt marsh harvest mouse, and salt marsh wandering shrew.

If off-site mitigation is determined to be necessary, the Director of Planning, Building, and Code Enforcement, in consultation with qualified biologists as described in the

NSAP and government agencies (*e.g.*, CDFG and USFWS) as appropriate, will determine the specific type and amount of off-site mitigation required. The type of mitigation required will depend on the type of nuisance species for which abatement measures are found to be inadequate, and the type of sensitive species potentially adversely affected by depredation or encroachment by the nuisance species. For example, if gull and corvid abatement is inadequate, off-site mitigation may take the form of a financial contribution to focused avian predator management programs being implemented by others in the South Bay (*e.g.*, elimination of problem corvids at snowy plover breeding locations); a financial contribution to habitat restoration and management projects being undertaken by others in the South Bay (*e.g.*, pond management and tidal marsh restoration by the CDFG at Eden Landing Ecological Preserve); acquisition and management/restoration of suitable pond and marsh habitat in the South Bay; or other measures to benefit sensitive species that are adversely affected by gulls and corvids.

The amount of off-site mitigation, either in terms of the amount of a financial contribution to predator/habitat management or the acreage of habitat restoration/management required, will depend on the difference between nuisance species monitoring results and the success criteria specified by the NSAP. The Director, in consultation with qualified biologists, will determine the appropriate level of the financial contribution or habitat restoration/management required based on the level of performance of the abatement program and an analysis, using the best information available at the time, of the likely effects of the nuisance species in question on sensitive species in the South Bay.

- e. **MM BIO – 14.1: Off-site Habitat Restoration/Enhancement.** Before landfill activities continue beyond the extent of current permitted capacity (50.8 million cubic yards), mitigation for project impacts on the habitat of California clapper rails located within 700 feet of landfill activities during the extended project lifetime and on the habitat of salt marsh harvest mice and salt marsh wandering shrews located within 100 feet of landfill activities during the extended lifetime shall be determined based on the performance standards and criteria described below. If impacts are determined to exist based on such performance standards and criteria, the operator of the landfill shall implement off-site mitigation to the extent determined to be necessary in accordance with the standards and criteria described herein.

In January 2018 or when the landfill has filled 48 million cubic yards (whichever comes first), the landfill operator shall have a qualified biologist complete an assessment of the impacts of continuing landfill activities on California clapper rails, salt marsh harvest mice, and salt marsh wandering shrews. The assessment shall occur before current permitted capacity (50.8 million cubic yards) is reached or exceeded. That assessment shall consider (a) the types and locations of project activities at the landfill that will continue beyond the point of current permitted capacity, (b) the distribution and quality of habitat in the surrounding marsh, (c) the distribution of clapper rails, salt marsh harvest mice, and salt marsh wandering shrews in the marsh (and more widely, in the South Bay, if appropriate), to the best and most complete extent that this can be determined or reasonably estimated, and (d) the use of the affected marsh by clapper rails, salt marsh harvest mice, and salt marsh wandering shrews (*e.g.*, for breeding or nonbreeding use), and other relevant factors based upon the information known at the time.

The biologist shall then determine the effect of continuing those landfill activities identified as noted in the previous paragraph on clapper rails, salt marsh harvest mice,



and salt marsh wandering shrews. This assessment will be based on consideration of the types of landfill activities that will occur in proximity to habitat suitable for these species; currently, "in proximity to" means within 700 feet of habitat suitable for the clapper rail and within 100 feet of habitat suitable for the salt marsh harvest mouse and salt marsh wandering shrew, although these distances may be refined during the assessment by more up-to-date information on effects of human activities on these species if more information is available when the assessment is performed. The biologist will consider any landfill activities involving the movement of heavy equipment, loud noise, and substantial vibrations, and new lighting to represent an impact if (a) those activities would not be performed during regular landfill closure or post-closure activities, and (b) they occur in close proximity to suitable habitat as described above.

The biologist will also take into account the anticipated duration (beyond the point of current permitted capacity - 50.8 million cubic yards) of activities that will adversely affect these species. Because these impacts are indirect and temporary (not permanent, but indefinite), the impacts of continuing landfill operations will cease after landfill capacity is reached and the landfill is closed. As a result, in determining the impacts to these species' habitat and/or populations, the biologist will consider the duration of the impact based on the predicted closure date as of the time that current landfill capacity is reached.

The type, location, and duration of landfill activities shall be identified by the landfill engineer responsible for NISL, based on landfill contract information and on the landfill engineer's professional knowledge and experience. Such information shall be provided to the City and consulting biologist.

The biologist's assessment will determine the extent of impacts of continuing activities on the California clapper rail, salt marsh harvest mice, and salt marsh wandering shrew in terms of either impacts to these species' populations (i.e., an estimate of the number of individuals/pairs affected) or the extent of impacts to these species' habitats, taking into account both habitat acreage and quality.

As part of this assessment, the biologist shall also conduct a survey of comparable salt marsh and brackish salt marsh habitat in the South Bay which are similar to the varying types of habitat within the 700 foot buffer (for clapper rails) and 100 foot buffer (for salt marsh harvest mice and wandering shrews) as measured from the then projected future landfill activities. This survey shall: (a) consider the quality of the varying types of comparable habitat in these comparable South Bay areas and contrast it with the quality of the habitat within these buffer areas adjacent to the landfill; (b) determine to the extent practicable and allowed by then current laws and regulations the average populations of each of these special status species in the comparable South Bay habitats; and (c) determine to the extent practicable and allowed by then current laws and regulations the number of these special status species within their respective buffer areas around the landfill. Taking differences in habitat quality into consideration, the biologist shall then reach a professional judgment as to whether the special status species in the habitat areas adjacent to the landfill are less numerous than in the comparable South Bay habitat areas. If the biologist makes this determination, the landfill operator shall be required to provide off-site mitigation for the species in question on a one to one acreage ratio for the area of affected habitat adjacent to the landfill. The same off-site mitigation can serve to mitigate impacts to California clapper rails, salt marsh harvest mice, and salt marsh wandering shrews in a single location as long as the habitat restored or enhanced is suitable for all

three species.

A report of this assessment and the biologist's findings shall be submitted to the Director of Planning, Building, and Code Enforcement. If the Director (in consultation with the NSAP Oversight Committee) determines, based on findings of the biologists' report or any other reasonable information available, that significant impacts to those species have not occurred from landfill activities up to that point in time and will not occur from continued landfill operations past the point of current permitted capacity (50.8 million cubic yards), the landfill owner will not be required to provide mitigation. If the Director (in consultation with the NSAP Oversight Committee) determines that the continued operation of the landfill past the point of current permitted capacity will result in significant impacts, off-site mitigation shall be provided.

Such mitigation shall be required to be implemented by the landfill operator using a one to one acreage ratio (i.e., the area of the largest affected habitat adjacent to the landfill to the area of mitigation habitat to be provided by the landfill operator, as described above). This off-site mitigation may take one or several forms, including, but not limited to:

- i. Restoring tidal marsh habitat suitable for use by these species
- ii. Enhancing tidal marsh habitat suitable for use by these species (e.g., via the control of invasive plants or alteration of the hydrologic regime [such as restoration of a muted tidal marsh to a fully tidal condition])
- iii. Enhancing populations of these species by increasing reproduction and survivorship (e.g., by controlling predatory or competitive animal species, in addition to the abatement required at the landfill itself)

This mitigation may take the form of direct implementation by the landfill owner or a monetary contribution to similar efforts being performed by others, preferably in the area, such as efforts by the CDFG or USFWS. The mitigation must be described and in place within 12 months prior to the landfill reaching its current permitted capacity of 50.8 million cubic yards.

The same off-site mitigation can serve to mitigate impacts to California clapper rails, salt marsh harvest mice, and salt marsh wandering shrews in a single location as long as the mitigation implemented will benefit all three species. However, performance criteria for each species must be satisfied. For habitat restoration, performance criteria would include the presence of the target species within five years of the development of vegetation suitable for each of those species within the restoration area and management of the site in accordance with the species' habitat and life-history requirements. For habitat enhancement or for measures, such as predator or competitor control, targeting increased reproduction and survivorship, performance criteria would include an increase in populations of the target species, within five years of implementation of the enhancement measures, commensurate with the estimated impact of the project. Prior to the point at which waste exceeding the current landfill capacity is accepted by the landfill, the applicant shall have a qualified biologist prepare a mitigation plan, which shall be submitted and reviewed by the Director of PBCE and the NSAP Oversight Committee, detailing the following:

- i. A summary of habitat and population impacts
- ii. Goals of the mitigation
- iii. A description of the type of mitigation

- iv. The location of the mitigation site(s) and description of existing site conditions
- v. Mitigation design (for habitat restoration and enhancement efforts) including:
  - 1). Existing and proposed site hydrology, geomorphology, and geotechnical stability, as applicable
  - 2). Grading/restoration plan
  - 3). Soil amendments and other site preparation elements as appropriate
  - 4). Maintenance activities
  - 5). Remedial measures and adaptive management measures
- vi. Monitoring plan (including final and performance criteria, monitoring methods, data analysis, reporting requirements, and monitoring schedule)
- vii. A contingency plan for mitigation elements that do not meet performance or final success criteria

The mitigation plan shall be submitted to the Director of Planning, Building, and Code Enforcement for review and approval. Once approved, the landfill operator shall fully implement and comply with such mitigation plan. The City shall ensure that the mitigation is provided and that the mitigation site meets its success criteria.

f. Geology and Soils (Director of PBCE and the City Geologist).

- i. **MM GEO – 1.1:** In order to construct or relocate buildings or structures anywhere on the project site, a design-level geotechnical report by a qualified professional that documents testing of conditions on the site shall be prepared prior to the approval of a PD Permit or PD Permit amendment for any such structure or relocation to the satisfaction of both the Director of Planning, Building, and Code Enforcement and the City Geologist.

Specifically for buildings proposed on the D-shaped area, the design-level geotechnical study shall a) identify the extent of the potentially liquefiable soils by completing closely spaced CPT soundings to more accurately locate potentially liquefiable soils, and b) identify the necessary measures needed to avoid and/or mitigate liquefaction impacts, in accordance with local building codes. Possible measures include deep soil mixing, jet grouting, dynamic deep compaction, removal and replacement, vibrocompaction/ vibroreplacement, and/or in-situ cementitious shear panels.

g. Global Climate Change (Director of PBCE and RWQCB).

- i. **MM C-GCC – 1.1:** As part of the landfill's annual capacity survey report to the LEA (as well as CalRecycle), the landfill operator shall also evaluate the status of sea level rise to ensure that the perimeter levee would provide at least two feet of freeboard above currently predicted sea level rise and a 100-year flood.
- ii. **Federal Aviation Administration Clearance.** The applicant must file a "Notice of Proposed Construction or Alteration" (FAA Form 7460-1) with the FAA for at least one top point of the proposed landfill and receive a "Determination of No Hazard" from the FAA prior to any increase in landfill height above 200 feet. The applicant shall comply with any conditions set forth in an FAA no-hazard determination, such as lighting/markings or subsequent notification filings.

- iii. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - h. *Construction Plans.* This permit file number, PD14-014, shall be printed on all construction plans submitted to the Building Division.
  - i. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - j. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
- 17. **Fire Flow.** Required fire flow for the site is calculated using CFC Appendix B, or as otherwise approved in writing by the Fire Chief. A 50% reduction in required fire flow may be authorized for sprinklered buildings containing light hazard occupancies. A 25% reduction in required fire flow may be authorized for sprinklered buildings containing ordinary hazard occupancies. No reduction is provided for unsprinklered or extra hazard occupancy buildings.
- 18. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by the Fire Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief. The number and distribution of fire hydrants shall be based on CFC Table C105.1 (no reduction allowed for fire flow requirement).
- 19. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
- 20. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE-NO PARKING," shall be provided as required by the Fire Department.
- 21. **Emergency Vehicle Access.** Width, length, and grade of the fire apparatus access roads, streets, avenues, and the like. Every portion of all building exterior walls shall be within 150 feet of an access road. To the satisfaction of the Fire Chief, the fire access shall include the following:
  - a. An approved all weather surface;
  - b. Access road that are at least 20 feet wide;
  - c. Dimensions with a minimum 13 feet 6 inch vertical clearance;
  - d. Load bearing designs that are maintained to support the loads of fire apparatus of at least 75,000 pounds;
  - e. Maintain a minimum inside turning radius of 30 feet and an outside turning radius of 50 feet;
  - f. Designs with approved provisions for turning around of fire apparatus if it has dead ends and is in excess of 150 feet;
  - g. Maintain a maximum grade of 15%;
  - h. Provide a second point of access is required when a fire apparatus road exceeds 1,000 feet;

- i. Curbs are required to be painted red and marked as “Fire Lane - No Parking” under the following conditions: (show exact locations on plan)
  - 1) Roads, streets, avenues, and the like that are 20 to less than 26 feet wide measured from face-of-curb to face-of-curb shall have curbs on both sides of the road painted and marked
  - 2) Roads, streets, avenues, and the like that are 26 to less than 32 feet wide measured from face-of-curb to face-of-curb shall have one curb painted and marked
22. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, and is subject to the following requirements to the satisfaction of the Director of Public Works:
23. **Transportation:** A traffic analysis was prepared for this project. The Newby Island Sanitary Landfill (NISL) is currently permitted to operate 24 hours a day and to accept an annual average of 3,260 tons of waste disposed per day (tpd) and a daily maximum of 4,000 tpd. The project applicant is not proposing to change these permit conditions. Therefore, we conclude that the subject project will be in conformance with the City of San Jose Transportation Level of Service Policy (Council Policy 5-3) and a determination for a negative declaration can be made with respect to traffic impacts.
24. **Grading/Geology:**
  - a. A grading permit is required prior to the issuance of a Public Works Clearance.
  - b. All on-site storm drainage conveyance facilities and earth retaining structures 4' foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2010 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10 year storm event.
  - c. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
  - d. Because this project involves a land disturbance of more than one acre, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
  - e. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit.
25. **Stormwater Runoff Pollution Control Measures:** This sites storm water treatment is regulated by the California Regional Water Quality Control Board (CRWQCB) and is not subject to the City's Post-Construction Urban Runoff Management Policy (Policy 6-29). Contact Vic Pal of the (CRWQCB), San Francisco Bay Region at [vic.pal@waterboards.ca.gov](mailto:vic.pal@waterboards.ca.gov) or (510) 622-2403 to obtain the requirements for storm water treatment, construction and inspection.

26. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
27. **Flood: Zone AE, Elevation 12.00' North American Vertical Datum of 1988 (NAVD88)**
- a. The following conditions will apply to any new structures:
  - b. Elevate the lowest finished floor above 12.00' NAVD88 or floodproof to the same elevation.
  - c. An Elevation Certificate for each new structure, based on construction drawings, is required prior to the issuance of building permit. Consequently, an Elevation Certificate for each built structure, based on the finished construction, is required prior to issuance of an occupancy permit.
  - d. If the structure is to be floodproofed, a Floodproofing Certificate (FEMA Form 81-65) for each structure, floodproofing details, a Flood Emergency Operation Plan, and an Inspection & Maintenance Plan are required prior to the issuance of a Public Works Clearance.
  - e. Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the base flood elevation or protected from flood damage.
28. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
29. **Street Improvements:** Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
30. **Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

**APPROVED** and issued on this **1<sup>st</sup> day of October, 2014.**

Harry Freitas, Director  
Planning, Building, and Code Enforcement

Deputy